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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 LYLE SHAWN CONWAY,

12 Defendant.

NO. CR-05-116-RHW-2

**PRELIMINARY ORDER OF
FORFEITURE**

13 Before the Court is the Government's Motion for Preliminary Order of
14 Forfeiture (Ct. Rec. 290). This motion was heard without oral argument. The
15 Government requests a preliminary order of forfeiture pursuant to Rule 32.2 of the
16 Federal Rules of Criminal Procedure and based upon the guilty plea of Lyle Shawn
17 Conway to the offense of Conspiracy to Traffic in Contraband Cigarettes, as
18 charged in Count 1 of the Indictment, in violation of 18 U.S.C. §§ 2342(a) and
19 371, and upon the terms of the Plea Agreement filed in this matter between Mr.
20 Conway and the United States.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. The Government's Motion for Preliminary Order of Forfeiture (Ct. Rec.
23 290) is **GRANTED**.

24 2. Pursuant to 18 U.S.C. § 2344(c) and 28 U.S.C. § 2461(c), Defendant Lyle
25 Shawn Conway's interest in the following property is forfeited to the United States
26 of America:

- 27 a. Three thousand eight hundred eighty-eight (3,888) cartons of
28 contraband cigarettes, seized by U.S. Immigration and Customs

1 Enforcement Agents on June 8, 2004, from LYLE'S II SMOKE
2 SHOP at 3114 River Road East in Tacoma, Washington, a smoke
3 shop owned by LYLE SHAWN CONWAY;

4 b. One thousand eight hundred thirty-eight (1,838) loose packs of
5 contraband cigarettes, seized by U.S. Immigration and Customs
6 Enforcement Agents on June 8, 2004, from LYLE'S II SMOKE
7 SHOP at 3114 River Road East in Tacoma, Washington, a smoke
8 shop owned by LYLE SHAWN CONWAY; and

9 3. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), Defendant
10 Lyle Shawn Conway's interest in the following property is forfeited to the United
11 States of America:

12 a. Twenty-seven thousand two hundred ninety-six dollars
13 (\$27,296.00) in United States currency seized by U.S. Immigration
14 and Customs Enforcement Agents on June 8, 2004, from LYLE'S II
15 SMOKE SHOP at 3114 River Road East in Tacoma, Washington, a
16 smoke shop owned by LYLE SHAWN CONWAY.

17 **IT IS FURTHER ORDERED** that the United States Department of
18 Homeland Security, Customs and Border Protection, and/or its agents and
19 representatives, shall seize the above-described property and maintain said
20 property in its custody and control until further order of this Court, or until this
21 Order becomes final pursuant to Rule 32.2(c)(2) of the Federal Rules of Criminal
22 Procedure.

23 **IT IS FURTHER ORDERED** that pursuant to 21 U.S.C. § 853(n), the
24 United States shall publish notice of the Preliminary Order of Forfeiture and the
25 intent of the United States to dispose of the above-described property, in
26 accordance with law. The notice shall run for one (1) day each week for three (3)
27 consecutive weeks in the Daily Journal of Commerce and/or any other appropriate
28 newspaper of general circulation. The notice shall state that any person, other than

1 Defendant, having or claiming a legal interest in property described above must
2 file a petition with the Court within thirty (30) days of the final publication of
3 notice or of receipt of actual notice, whichever is earlier.

4 The notice shall advise such interested person that:

- 5 1. the petition shall be for a hearing to adjudicate the validity of the
- 6 petitioner's alleged interest in such properties;
- 7 2. the petition shall be signed by the petitioner under penalty of perjury; and
- 8 3. the petition shall set forth the nature and extent of the petitioner's right,
- 9 title or interest in the forfeited properties.

10 The petition shall also set forth any additional facts supporting the
11 petitioner's claim and the relief sought.

12 The United States shall also, to the extent possible, provide direct written
13 notice as a substitute for the published notice to any person known to have alleged
14 an interest in the above-described property, which is the subject of this Preliminary
15 Order of Forfeiture. Upon adjudication of any third-party claims, this Court will
16 enter a Final Order of Forfeiture pursuant to Rule 32.2(c)(2) of the Federal Rules
17 of Criminal Procedure, in which all such claims are addressed.

18 **IT IS FURTHER ORDERED** that pursuant to Rule 32.2(b)(3) of the
19 Federal Rules of Criminal Procedure, this Preliminary of Forfeiture shall become
20 final as to Defendant prior to the time of sentencing, upon conclusion of the
21 ancillary proceeding, and shall be made part of the sentence and included in the
22 judgment. Based upon the Plea Agreement and the guilty plea of Defendant
23 herein, the Court finds that Defendant had an interest in the forfeited properties. If
24 no third party files a timely claim, this Order shall become the Final Order of
25 Forfeiture as provided by Rule 32.2(c)(2) of the Federal Rules of Criminal
26 Procedure.

27 **IT IS FURTHER ORDERED** that after the disposition of any motion filed
28 under Rule 32.2(c)(1)(A) of the Federal Rules of Criminal Procedure, and before a

1 hearing on any third party petition, discovery may be conducted in accordance with
2 the Federal Rule of Civil Procedure upon a showing that such discovery is
3 necessary or desirable to resolve factual issues.

4 **IT IS FURTHER ORDERED** that the United States shall have clear title to
5 the properties listed above following the Court's disposition of all third party
6 interests, or, if none, following the expiration of the period provided in 21 U.S.C. §
7 853(n) for the filing of third party petitions.

8 **IT IS FURTHER ORDERED** that the Court shall retain jurisdiction to
9 enforce this Order, and to amend it as necessary, pursuant to Rule 32.2(e) of the
10 Federal Rules of Criminal Procedure.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
12 Order, forward copies to counsel, and to forward four (4) "raised seal" certified
13 copies to the United States Attorney's Office in Seattle, Washington.

14 **DATED** this 8th day of June, 2007.

15 *S/ Robert H. Whaley*

16 **ROBERT H. WHALEY**
17 **United States District Judge**

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